United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: July 11, 2003

TO : Elizabeth Kinney, Regional Director
Harvey A. Roth, Regional Attorney
Gail Moran, Assistant to Regional Director
Region 13

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Operating Engineers Local 150
(Terra Group of Chicago, Inc.)
Case 13-CP-812

This Section 8(b)(7)(C) case was submitted for advice on whether the Union unlawfully continued recognitional picketing for seven days after a Board decision had issued dismissing a Section 8(a)(5) complaint.

This memorandum confirms the telephone communication of July 3d. We conclude that the Union was privileged to engage in recognitional picketing pending the Section 8(a)(5) complaint and that the Union therefore did not violate Section 8(b)(7)(C) by picketing for less than 30 days after the Board decision issued dismissing that complaint.

FACTS

In February 2001, the Union filed a Section 8(a)(5) charge, and complaint subsequently issued alleging that the Employer had unlawfully withdrawn recognition after agreeing to recognize and bargain with the Union. In around March 2002, the Union began continuously picketing the Employer in part for recognitional purposes. On June 6, 2003, the Board dismissed the 8(a)(5) allegation finding as a matter of fact that the Employer had not voluntarily recognized the Union.[1]

The Union learned of the Board's decision on either June 6 or 9. The Union nevertheless continued its recognitional picketing from June 6 through June 13. On

[1] Terracon, Inc., 339 NLRB No. 35. The Board otherwise affirmed the ALJ's finding of numerous Section 8(a)(1) violations including interrogations, warnings of futility, and threats to close or contract out work.

June 16, the Employer filed the instant charge alleging that the Union's picketing, in conjunction with its previous picketing for some 15 months, violated Section 8(b)(7)(C).

ACTION

Since the Union could not have filed a valid election petition pending the Board's consideration of its Section 8(a)(5) allegation, and was therefore entitled to engage in recognitional picketing during that period without violating 8(b)(7)(C), the Union was entitled to a full 30 days of recognitional picketing after the Board dismissed the 8(a)(5) complaint.[2]

In Shoreline South, in November 1984 the union filed a Section 8(a)(5) charge and began recognitional picketing. On September 30, 1985, the Board dismissed the 8(a)(5) allegation. The union continued its recognitional picketing and filed an election petition on October 31, 31 days after the Board decision. The General Counsel issued a Section 8(b)(7)(C) complaint alleging that the union should have filed its petition either (1) within 30 days of its commencement of recognitional picketing in October 1984; or (2) within 30 days after the Board decision had issued dismissing the 8(a)(5) allegation. The ALJ found no violation on the view that the union had filed its petition within a reasonable period of time after it had received actual notice of the Board's September 30 decision. A Board majority disagreed found a violation on the ground that the union had not filed its petition within 30 days of the Board decision.[3]

The Board initially noted that the union could not have filed a valid election petition while its Section 8(a)(5) allegation was pending.[4] The Board thus held that the union "was justified in relying on the viability of its 8(a)(5) charges and in not attempting to file a

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[2] Local 250, Hospital Workers Union (Shoreline South Intermediate Care, Inc.), 300 NLRB 108 (1990).

[3] Member Devaney dissented because, in his view: "Nothing in the Act nor its legislative history mandates the majority's finding that the 30-day period begin on the date of the issuance of the Board's decision." Id at 111.

[4] See Hod Carriers Local 840 (Blinne Construction), 135 NLRB 1153 (1962).

representation petition pending the Board's ruling."[5] The Board then found a violation because the union had not filed its petition until the 31st day after the Board's ruling:

> Given the extended period of time that the Respondent had already picketed the Employer [10 months], it is neither burdensome upon the Union or restrictive of its rights to require it to act with some diligence in responding to the Board's finding.

The Board affirmatively stated that it was finding a Section 8(b)(7)(C) violation solely on that basis. Therefore the Board majority (and even the dissent) rejected the General Counsel's alternative theory of violation, viz., that the union should have filed its petition within 30 days of its commencement of picketing 10 months earlier pending the Board consideration of the 8(a)(5) allegation. We therefore find that the Union here also need not have filed a petition prior to issuance of the Board decision in this case, and also was entitled to a full 30 days of picketing after issuance of that decision.

The Employer notes that the Board in Shoreline South found it "unnecessary to decide whether some period of time less than 30 days after the decision may have been reasonable for the Respondent to have filed its petition."[6] The Board "has generally defined a 'reasonable period of time' as 30 days, except where picketing is accompanied by violence or other picket line misconduct or when the picketing union is barred by the Act from being certified as the unit's collective-bargaining representative."[7] None of those circumstances is present in this case. We therefore find no basis in this case for shortening the usual 30 day period of time.

Since the Union had a full 30 days after issuance of the Board decision in which to file its petition, the Region should dismiss this charge, absent withdrawal.

B.J.K.

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[5] Shoreline South, supra, 300 NLRB at 110.

[6] Id at 110, note 10.

[7] Operating Engineers, Local 101 (St. Louis Bridge Construction), 297 NLRB 485 (1989). See also UMW Dist 12 (Truax-Traer Coal), 177 NLRB 213 (1969)(mass picketing shortened reasonable time) and Teamsters Local 71 (Wells Fargo), 221 NLRB 1240 (1978)(union could not be certified).